

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CINDY CHEN, *on behalf of herself and others similarly situated,*

Plaintiff,

v.

SHANGHAI CAFÉ DELUXE, INC. d/b/a
Shanghai Café, YILI WENG a/k/a Eileen
Weng, PING LIN, and XINSHENG GU a/k/a
John Gu

Defendants.

**ANSWER AND
AFFIRMATIVE DEFENSES**

1:17-cv-02536

Defendants Shanghai Café Deluxe, Inc. d/b/a Shanghai Café, Yili Weng a/k/a Eileen Weng, Ping Lin, and Xinsheng Gu a/k/a John Gu (hereinafter collectively referred to as "Defendants") by way of Answer to the Complaint, state as follows:

"AS TO INTRODUCTION"

1. Paragraph 1 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 1 of the Complaint.
2. Paragraph 2 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 2 of the Complaint.
3. Paragraph 3 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 3 of the Complaint.

"AS TO JURISDICTION AND VENUE"

4. Paragraph 4 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 4 of the Complaint.
5. Paragraph 5 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 5 of the Complaint.
6. Paragraph 6 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 6 of the Complaint.
7. Paragraph 7 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 7 of the Complaint.

"AS TO PLAINTIFF"

8. Defendants deny the allegation asserted in Paragraph 8 of the Complaint and leave Plaintiff to her proofs.
9. Defendants deny the allegations asserted in Paragraph 9 of the Complaint and leave Plaintiff to her proofs.

"AS TO DEFENDANTS"

Corporate Defendant

10. Defendants admit that Shanghai Café Deluxe, Inc. d/b/a Shanghai Café is located at 100 Mott Street, New York, NY 10013. Defendants deny the remaining allegations asserted in Paragraph 10 of the Complaint and leave Plaintiff to her proofs.

11. Defendants deny the allegations asserted in Paragraph 11 of the Complaint and leave Plaintiff to her proofs.
12. Defendants deny the allegations asserted in Paragraph 12 of the Complaint and leave Plaintiff to her proofs.
13. Defendants deny the allegations asserted in Paragraph 13 of the Complaint and leave Plaintiff to her proofs.
14. Defendants deny the allegations asserted in Paragraph 14 of the Complaint and leave Plaintiff to her proofs.
15. Paragraph 15 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 15 of the Complaint.

Owner/Operator Defendants

16. Defendants deny the allegations asserted in Paragraph 16 of the Complaint and leave Plaintiff to her proofs.
17. Defendants deny the allegations asserted in Paragraph 17 of the Complaint and leave Plaintiff to her proofs.
18. Defendants deny the allegations asserted in Paragraph 18 of the Complaint and leave Plaintiff to her proofs.
19. Defendants deny the allegations asserted in Paragraph 19 of the Complaint and leave Plaintiff to her proofs.
20. Defendants deny the allegations asserted in Paragraph 20 of the Complaint and leave Plaintiff to her proofs.

21. Defendants deny the allegations asserted in Paragraph 21 of the Complaint and leave Plaintiff to her proofs.

22. Defendants deny the allegations asserted in Paragraph 22 of the Complaint and leave Plaintiff to her proofs.

23. Defendants deny the allegations asserted in Paragraph 23 of the Complaint and leave Plaintiff to her proofs.

24. Defendants admit that Ping Lin is the mother of Yili Weng.

25. Defendants deny the allegations asserted in Paragraph 25 of the Complaint and leave Plaintiff to her proofs.

26. Defendants deny the allegations asserted in Paragraph 26 of the Complaint and leave Plaintiff to her proofs.

"AS TO STATEMENT OF FACTS"

27. Defendants deny the allegations asserted in Paragraph 27 of the Complaint and leave Plaintiff to her proofs.

28. Defendants deny the allegations asserted in Paragraph 28 of the Complaint and leave Plaintiff to her proofs.

29. Defendants deny the allegations asserted in Paragraph 29 of the Complaint and leave Plaintiff to her proofs.

30. Defendants deny the allegations asserted in Paragraph 30 of the Complaint and leave Plaintiff to her proofs.

31. Defendants deny the allegations asserted in Paragraph 31 of the Complaint and leave Plaintiff to her proofs.

32. Defendants deny the allegations asserted in Paragraph 32 of the Complaint and leave Plaintiff to her proofs.
33. Defendants deny the allegations asserted in Paragraph 33 of the Complaint and leave Plaintiff to her proofs.
34. Defendants deny the allegations asserted in Paragraph 34 of the Complaint and leave Plaintiff to her proofs.
35. Defendants deny the allegations asserted in Paragraph 35 of the Complaint and leave Plaintiff to her proofs.
36. Defendants deny the allegations asserted in Paragraph 36 of the Complaint and leave Plaintiff to her proofs.
37. Defendants deny the allegations asserted in Paragraph 37 of the Complaint and leave Plaintiff to her proofs.
38. Defendants deny the allegations asserted in Paragraph 38 of the Complaint and leave Plaintiff to her proofs.
39. Defendants deny the allegations asserted in Paragraph 39 of the Complaint and leave Plaintiff to her proofs.

"AS TO COLLECTIVE ACTION ALLEGATIONS"

40. Paragraph 40 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 40 of the Complaint.
41. Paragraph 41 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 41 of the Complaint.

"AS TO STATEMENT OF CLAIMS"

"AS TO COUNT I."

**[Age Discrimination in Violation of the Age Discrimination in Employment Act
Brought on behalf of the Plaintiff and the Collective against Corporate Defendant]**

42. Defendants repeat and re-allege each of the above paragraphs as if set forth at length herein.
43. Defendants deny the allegations asserted in Paragraph 43 of the Complaint and leave Plaintiff to her proofs.
44. Paragraph 44 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 44 of the Complaint.
45. Paragraph 45 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 45 of the Complaint.
46. Paragraph 46 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 46 of the Complaint.

"AS TO COUNT II."

**[Age Discrimination in Violation of the New York State Human Rights Law
Brought on behalf of Plaintiff against Corporate Defendant]**

47. Defendants repeat and re-allege each of the above paragraphs as if set forth at length herein.
48. Paragraph 48 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 48 of the Complaint.

49. Paragraph 49 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 49 of the Complaint.

50. Paragraph 50 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 50 of the Complaint.

"AS TO COUNT III."
[Age Discrimination in Violation of the New York City Human Rights Law
Brought on behalf of Plaintiff against Corporate Defendant]

51. Defendants repeat and re-allege each of the above paragraphs as if set forth at length herein.

52. Paragraph 52 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 52 of the Complaint.

53. Paragraph 53 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 53 of the Complaint.

54. Paragraph 54 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 54 of the Complaint.

"AS TO COUNT IV."
[Age Discrimination in Violation of the New York State Human Rights Law
Brought on behalf of Plaintiff against Individual Defendants]

55. Defendants repeat and re-allege each of the above paragraphs as if set forth at length herein.

56. Paragraph 56 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 56 of the Complaint.

57. Paragraph 57 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 57 of the Complaint.

58. Paragraph 58 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 58 of the Complaint.

"AS TO COUNT V."

**[Age Discrimination in Violation of the New York City Human Rights Law
Brought on behalf of Plaintiff against Individual Defendants]**

59. Defendants repeat and re-allege each of the above paragraphs as if set forth at length herein.

60. Paragraph 60 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 60 of the Complaint.

61. Paragraph 61 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 61 of the Complaint.

62. Paragraph 62 of the Complaint asserts legal conclusions to which no answer is required. To the extent an answer is required, Defendants deny each and every allegation asserted in Paragraph 62 of the Complaint.

"AS TO PRAYER FOR RELIEF"

Defendants deny the allegations asserting prayer for relief, and its subparagraphs, and

aver that Plaintiff is not entitled to any of the relief requested therein or any other relief.

AFFIRMATIVE DEFENSES

Defendant asserts the following allegations as affirmative defenses without admitting that it bears the burden of persuasion or presentation of evidence on each or any of these matters.

FIRST AFFIRMATIVE DEFENSE

1. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiff's claims are barred because they are moot.

THIRD AFFIRMATIVE DEFENSE

3. At no time material hereto did the Defendants act in a willful, wanton, reckless, and or malicious manner or with reckless disregard of the applicable laws.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff is not entitled to any of the relief requested in the Complaint and Defendants acted in good faith at all times.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, delay, waiver, estoppel, acquiescence, and or excuse.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands, estoppel, accord and satisfaction.

SEVENTH AFFIRMATIVE DEFENSE

7. Any act(s) and/or omission(s) which may be found to be in violation of the rights afforded by the applicable law(s) asserted herein were not willful, but occurred in good faith and were based

upon reasonable factors.

EIGHTH AFFIRMATIVE DEFENSE

8. The imposition of punitive damages in this matter would violate each Defendant's right to due process of law in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiff's claims are barred, in whole or in part, as Plaintiff failed to mitigate damages, if any.

TENTH AFFIRMATIVE DEFENSE

10. Defendants have made a good faith efforts to comply with the ADEA, New York State Human Rights Law, and the New York City Human Rights Law.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations, including the ADEA, New York State Human Rights Law §290 et seq. and the New York City Human Rights Law § 8-101 et seq.

TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiff's employment was terminated for legitimate, non-discriminatory reasons.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiff voluntarily quit and\or left the employment.

ADDITIONAL DEFENSES

14. Defendants reserve the right to raise any additional defenses as may be found to be merited during the course of discovery in, or trial of, this action, including without limitation any equitable defenses.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the Defendants demand a trial by jury on all issues so triable.

DESIGNATION OF TRIAL COUNSEL

The Court is hereby advised that Michael K. Chong, Esq., is hereby designated as trial counsel on behalf of Defendants.

WHEREFORE, Defendants respectfully request that this court grant the following relief: Defendants respectfully request that this Court enter judgment in its favor, dismiss the Complaint with prejudice, award Defendants their costs, attorneys' fees and expenses, and grant such other relief as this Court deems proper.

Date: June 26, 2017

Respectfully submitted,

Michael K. Chong

Michael K. Chong, Esq.
Attorney for Defendants

300 Hudson Street, Ste. 10
Hoboken, NJ 07030
Ph#: (201) 203-7476
Fx#: (201) 708-6676

2 Executive Drive, Ste. 720
Fort Lee, NJ 07024
Ph#: (201) 947-5200
Fx#: (201) 708-6676

1250 Broadway, 36th Fl., Ste. 300
New York, NY 10001
Ph#: (212) 726-1104
Fx#: (212) 726-3104
MKC@mkclawgroup.com